employment standards review

DISCUSSION GUIDE

Ensuring Alberta's employment standards remain current and relevant

PLEASE RETURN YOUR RESPONSE BY SEPTEMBER 29, 2005

Alberta

105-07513/

August 18, 2005

Message from the Minister

Thank you for taking the time to take part in Alberta's employment standards review.

From time to time, it is important that government review laws to ensure they are current and relevant. In the 2005 Speech from the Throne, the Government of Alberta committed to reviewing the province's employment standards. Alberta Human Resources and Employment is now conducting a broad review of employment standards legislation.

Alberta's employment standards play an important role in supporting fair and productive workplaces. These laws protect workers by ensuring that minimum employment standards such as overtime and general holiday pay are maintained in every workplace.

Your participation in the public consultation is crucial to the success of the employment standards review. Thank you once again for taking this opportunity to share your thoughts and opinions.

M. Cardinal

Mike Cardinal

Minister, Alberta Human Resources and Employment

Table of contents

Introduction 2

Participation in the review 2

Tell us about yourself 4

1. **Hours of Work and Overtime** 5
   - A. Maximum Hours of Work and Rest Between Shifts 5
   - B. Days of Rest 5
   - C. Calculation of Overtime 6
   - D. Overtime Agreements 6
   - E. Breaks 7
   - F. Employment For Less than Three Hours 7

2. **Vacations and Vacation Pay** 8

3. **Leaves from Work** 8
   - A. Maternity and Parental Leave 8
   - B. Other Employment Leaves 9

4. **Special Situations** 10
   - A. Exceptions – Farm and Ranch Employees 10
   - B. Exceptions – Domestic Employees 11
   - C. Exceptions - Other Occupations 12

5. **Employment of Persons Under 18** 13
   - A. Adolescents – 12, 13 and 14 years old 13
   - B. Young Persons – 15, 16 and 17 years old 14

6. **Permits** 15
   - A. General Permits 15
   - B. Minimum Wage Exemption Permits 16

7. **Payment of Earnings and Deductions** 16
   - A. Payment of Earnings 16
   - B. Deductions from Earnings 17

8. **General Holiday Pay** 18

9. **Termination of Employment** 19
   - A. By the Employer 19
   - B. By the Employee 21
   - C. Temporary Layoff 22

10. **Fines and Ticketing** 22
    - A. Fines 22
    - B. Ticketing 24

11. **Conclusion** 25

Introduction

Human Resources and Employment (HRE) is conducting a broad review of Alberta's employment standards. The last major review of Alberta's employment standards occurred in the late 1980s. Since that time, workplaces in Alberta have changed significantly. Technological advances, globalization, increased competition, and changes to family and workforce demographics have resulted in new work arrangements and different requirements for employers and employees.

The *Employment Standards Code (Code)* and Regulation establish minimum standards of employment for employers and employees. These laws address issues important to Albertans, such as:

- Payment of earnings,
- Employment records,
- Minimum wage,
- Hours of work and overtime,
- General holidays and general holiday pay,
- Vacations and vacation pay,
- Maternity and parental leave,
- Termination of employment, and
- Restrictions on the employment of children.

While these laws establish minimum standards, employers and employees may agree to terms and conditions that exceed these minimums.

As part of the review, HRE conducted preliminary consultations with key stakeholders drawn from employers and industry associations as well as employee organizations. Feedback from these groups led to the development of the following vision statement:

"As Albertans value fair, productive and effective workplaces, Employment Standards serves Alberta by providing a foundation through work standards that supports employers and employees in achieving these outcomes."

Participation in the review

The purpose of this discussion guide is to give Albertans an opportunity to provide their views about provincial employment standards.

The questions asked in this discussion guide deal with issues that have been raised by stakeholders or otherwise identified over the years. They highlight key topics for consideration and are designed to bring forward opinions, from different perspectives, on how provincial employment standards are working and where they can be improved.

In this discussion guide, some questions require a yes or no answer, others ask you to consider a number of options, or ask for your comments. Feel free to skip ahead to topics that interest you instead of answering every question. There is a general comments box at the end of the guide for you to provide feedback on employment standards issues not identified in this discussion paper. Your feedback is important.

The questions are provided for discussion purposes only. They should not be interpreted as a reflection of the Alberta government's intentions with respect to changes to employment standards laws.

You can answer the questions online at:

www.gov.ab.ca/hre/employmentstandards or

Please send written submissions to:

Alberta Human Resources and Employment
Employment Standards Review
8th Floor, 10808 – 99 Avenue
Edmonton, Alberta T5K 0G5

THE DEADLINE FOR SUBMISSIONS IS SEPTEMBER 29, 2005.

If you have any questions about the review, please email: es.review@gov.ab.ca.

Tell us about yourself

RESPONDENT INFORMATION

My views reflect the perspective of (choose one):

☐ Employer or Employer Association ☐ Employee or Employee Association ☐ Other

I am responding on behalf of:

☐ Myself ☐ My Organization ☐ Other

Title (Optional): _____ Organization: _____

Name (Optional): _____

Mailing Address (Optional):

_____

_____

Industry (check one):

☐ Agriculture, Forestry, Fishing and Hunting
☐ Mining and Oil and Gas Extraction
☐ Utilities
☐ Construction
☐ Manufacturing
☐ Wholesale Trade
☐ Retail Trade
☐ Transportation and Warehousing
☐ Information and Cultural Industries
☐ Finance and Insurance
☐ Real Estate and Rental and Leasing
☐ Professional, Scientific and Technical Services
☐ Management of Companies and Enterprises
☐ Administrative and Support, Waste Management and Remediation Services
☐ Educational Services
☐ Health Care and Social Assistance
☐ Arts, Entertainment and Recreation
☐ Accommodation and Food Services
☐ Other Services (except Public Administration)
☐ Public Administration

I am interested in participating in future employment standards consultations:

☐ Yes ☐ No

INFORMATION COLLECTED FROM SURVEYS

The information collected through this survey is being used to obtain the views and opinions of Albertans with respect to the province's employment standards. The information is being gathered under the authority of the *Government Organization Act* and is managed in compliance with the *Freedom of Information and Protection of Privacy Act*. If you choose to provide us with your name and mailing address, we may be in touch with you for clarification, if required, or future consultation. This information will only be used for those purposes.

If you have any questions about the use of personal information, please contact Employment Standards at (780) 427-3731.

Stakeholders who participated in preliminary consultation sessions told HRE that employment standards legislation should provide more flexibility to both employers and employees, while ensuring that appropriate standards of fairness were maintained.

1. Hours of work and overtime

A. MAXIMUM HOURS OF WORK AND REST BETWEEN SHIFTS

The *Code* requires an employer to keep an employee's hours of work to 12 consecutive hours in a workday. However there are exceptions for accidents and urgent, unforeseen or unpreventable work.

The *Code* does not legislate hours of rest between shifts. Recent safety studies suggest that the amount of rest between shifts has a greater safety benefit than limiting maximum hours of work. The literature recommends that employees should have from 7 1/2 to 8 1/2 hours of rest between shifts to ensure safety.

Q: Which of the following statements best reflects your views?

- ☐ Create a guaranteed rest period per day, and remove the 12 hour daily limit.
- ☐ Create a guaranteed rest period per day, but keep the 12 hour daily limit.
- ☐ No change required.
- ☐ No opinion.

B. DAYS OF REST

The *Code* requires employers to allow their employees at least one day of rest each week. Rest days may be accumulated for up to four weeks, but must be taken as consecutive days off within this four-week period. Accumulated rest days sometimes present problems for work that is seasonal or takes place at remote locations. HRE occasionally grants permits to extend the number of days that can be worked consecutively (for more discussion on permits, please see question 6 of this section).

Q: Which of the following statements best reflects your views?

- ☐ The days of rest provisions need change.
- ☐ The days of rest provisions do not need change.
- ☐ No opinion.

C. CALCULATION OF OVERTIME

The *Code* requires the payment of overtime at 1.5 times the employee's wage rate for hours in excess of 8 in a day or 44 in a week, whichever calculation results in the greater amount of overtime hours.

Q: Which of the following statements best reflects your views?

- ☐ Eliminate daily overtime.
- ☐ Raise the number of hours worked before overtime is payable.
- ☐ Lower the number of hours worked before overtime is payable.
- ☐ Give employees a right of refusal to work overtime.
- ☐ No change is required.

_____

_____

_____

_____

Note: There are certain industries that have different daily, weekly or in some cases monthly overtime thresholds. Any changes made will affect all overtime thresholds, whether general or special.

D. OVERTIME AGREEMENTS

The *Code* provides employers and employees with the choice to enter into overtime agreements. An overtime agreement allows an employer to provide time off in lieu for overtime hours worked within three months. In Alberta, overtime is payable at 1.5 times the regular rate of pay. However, time off in lieu under an overtime agreement is calculated as one hour for every overtime hour worked.

Q: Which of the following statements best reflects your views?

- ☐ The provisions about overtime agreements need change.
- ☐ The provisions about overtime agreements do not need change.
- ☐ No opinion.

_____

_____

_____

_____

_____

E. BREAKS

Under the *Code*, employers must allow a total of at least 30 minutes of rest for each shift over five consecutive hours. There are exceptions for urgent work, accidents and circumstances when taking a break is not reasonable.

Q: Which of the following statements best reflects your views?

- ☐ The rest and break provisions need change.
- ☐ The rest and break provisions do not need change.
- ☐ No opinion.

F. EMPLOYMENT FOR LESS THAN THREE HOURS

Under the *Code*, if an employee works less than three consecutive hours, the employer must pay the employee for three hours of work at not less than the minimum wage. There are some exceptions to this rule. * This provision creates difficulties for employees who are not able or willing to work three hours and employers who do not have three hours work to offer.

Q: Which of the following statements best reflects your views?

- ☐ Change the requirement from three to two hours.
- ☐ Create an exception for employees who are not able or willing to work three hours.
- ☐ No change needed.

* The following groups of employees are entitled to be paid for two hours at not less than the minimum wage for employment less than two hours: adolescent employees, school bus drivers and part-time employees employed in recreation or athletic programs run by municipalities, a community service organization, or a Metis settlement. Additional exceptions have also been granted by permit.

2. Vacations and vacation pay

After one year of employment, employees are entitled to two weeks paid vacation. After five years of employment, employees are entitled to three weeks paid vacation each year. Employees who do not complete one year of service are entitled to 4% of their wages in lieu of paid vacation time.

Q: Are you satisfied with Alberta's vacation and vacation pay provisions?

☐ Yes ☐ No ☐ No opinion

3. Leaves from work

A. MATERNITY AND PARENTAL LEAVE

The *Code* provides for a combination of 15 weeks of unpaid maternity leave for birth mothers, and 37 weeks of unpaid parental leave for parents, including adoptive parents.

Q: Are you satisfied with Alberta's maternity and parental leave provisions?

☐ Yes ☐ No ☐ No opinion

B. OTHER EMPLOYMENT LEAVES

There are no provisions in the *Code* for other unpaid leaves from work other than maternity and parental leave. Other circumstances that may require an employee to miss work include funerals, employee or family illness, emergencies or compassionate care, which is unpaid time off from work to care for a terminally ill immediate family member.

Q1. Should there be unpaid general leave that could be used in these types of situations?

☐ Yes ☐ No ☐ No opinion

If yes:

How long should it be?

Q2. If you agree that there should be unpaid general leave, should there be any eligibility requirements for this leave? For example, should an employee's length of employment or the size of the business matter?

4. Special situations

The *Code* allows exceptions to minimum standards based on the unique needs of certain occupations or industries.

A. EXCEPTIONS – FARM AND RANCH EMPLOYEES

Under the *Code*, farm and ranch employees are not covered by the following employment standards: maximum hours of work, notice of work times, rest periods, days of rest, overtime, general holidays, vacations and minimum wage. In addition, there are no restrictions on the employment of children.

The exclusion of farm and ranch employees from most forms of employment standards coverage reflects the unique operational requirements of the family farm. However, while family farms continue to be an important part of Alberta's economy, more industrialized forms of agriculture, such as feedlots and factory farms, have also emerged.

Q: Which of the following statements best reflects your views?

- ☐ Preserve exceptions for all farm and ranch employees, regardless of where they work.
- ☐ Preserve exceptions for family farms; remove them for industrialized operations.
- ☐ Lift some or all exceptions for industrialized operations only.
- ☐ Lift some or all exceptions for all farm and ranch employees, regardless of where they work.

If you believe that exceptions should be removed, please indicate which ones by putting a check mark in the appropriate box.

EXCEPTION	FAMILY FARM	INDUSTRIALIZED OPERATIONS
Maximum hours of work		
Notice of work times		
Rest periods		
Days of rest		
Overtime		
General holidays		
Vacations		
Minimum wage		
Employment of children		

B. EXCEPTIONS – DOMESTIC EMPLOYEES

Under the *Code*, domestic employees such as nannies are not covered by the following employment standards: maximum hours of work, notice of work times and overtime.

Q: Do you agree with the exceptions for domestic employees?

☐ Yes ☐ No ☐ No opinion

C. EXCEPTIONS - OTHER OCCUPATIONS

There are a variety of exceptions for specific occupations and industries. For example, in oilwell servicing, employees are exempt from restrictions on maximum hours of work. In construction, termination notice is not required. If you would like more information on these exceptions, visit our website at www.gov.ab.ca/hre/employmentstandards.

Q: If you have any comments on the occupation and industry specific exceptions, please provide them below.

5. Employment of persons under 18

A. ADOLESCENTS – 12, 13 AND 14 YEARS OLD

Under the *Code*, adolescents aged 12 to 14 cannot work without parental consent. They cannot be employed more than two hours on a school day and eight hours on a non-school day. They also cannot work from 9 p.m. to 6 a.m. They cannot do work that would be harmful to their health or education.

Adolescents are further restricted in terms of the occupations they can perform.

1. Adolescents can work as a delivery person of small wares for a retail store, clerk in an office or retail store, and as a newspaper or flyer delivery person.
2. Adolescents can work in the restaurant and food services industry doing the following duties: host/hostess duties, cashier duties, dishwashing, bussing tables, providing customer service, assembling food orders, waiting on tables or cleaning. When working in these jobs, they cannot use any dangerous equipment or be around smoking, and must be in the presence of an adult at all times. A safety checklist and a hazard assessment must also be completed prior to any employment commencing.
3. Government permits are required for any other occupations. In these cases, the permits are granted on an individual basis. In assessing whether to grant these permits, a heavy emphasis is placed on the adolescent's safety.

Q1: Which of the following statements most closely reflects your views about the appropriate starting age for employment?

- ☐ 12 year olds are too young to be employed.
- ☐ 12 and 13 year olds are too young to be employed.
- ☐ Anyone under 15 is too young to be employed.
- ☐ I agree that 12, 13 and 14 year olds should have the opportunity to work.

Q2: Which of the following statements most closely reflects your views about regulating adolescent employment?

- ☐ The current level of protection is adequate. No change is required.
- ☐ All restrictions should be contained in the law, and no exceptions should be granted by permit.
- ☐ Government should place more restrictions on adolescent employment.
- ☐ Government should place fewer restrictions on adolescent employment. Parents are in the best position to decide what is right for their children.
- ☐ I do not support any adolescent employment.

B. YOUNG PERSONS – 15, 16 AND 17 YEARS OLD

Young persons aged 15, 16 and 17 may work in any occupation, but there are special conditions regarding their employment between 9 p.m. to 6 a.m. From 9 p.m. to midnight, young persons working in any retail or lodging business require adult supervision. Employment in these businesses between midnight and 6 a.m. is prohibited. Working in any other businesses between midnight and 6 a.m. is only permitted with parental consent and adult supervision.

Q: Do you agree with the current provisions for the employment of young persons?

☐ Yes ☐ No ☐ No opinion

6. Permits

A. GENERAL PERMITS

Under the *Code*, employers and employees can apply to the Director of Employment Standards for a permit excluding them from certain standards. Unlike legislative exceptions, permits are reviewed and issued on a case-by-case basis. While permits provide an opportunity for employers and employees to address unique work situations, they do create an exception to the minimum standards.

These permits are typically granted to individual employers, but on occasion have also been granted to employer associations. Permits have been granted when an employer and union have negotiated a collective agreement that otherwise would be in violation of the *Code*.

Q: Should the Director of Employment Standards have the authority to grant exceptions to minimum standards by permit?

- ☐ The Director should have a broad permitting authority with no restrictions.
- ☐ The Director should have a limited permitting authority with restrictions. These restrictions could include a requirement for employee consent, a safety checklist and a fixed time limit.
- ☐ The Director should have no authority to grant exceptions to minimum standards by permit.

B. MINIMUM WAGE EXEMPTION PERMITS

Under the *Code*, a prospective employer can apply for a permit to employ a person with disability for less than the minimum wage. This can facilitate greater employment opportunities.

Q: **Should employment standards legislation allow persons with disabilities to be paid less than the minimum wage?**

☐ Yes ☐ No ☐ No opinion

7. Payment of earnings and deductions

A. PAYMENT OF EARNINGS

The *Code* requires earnings to be paid within ten days of the end of a pay period. However, when employment terminates, the timeframes for paying earnings vary depending on the circumstances. When employment is terminated by termination notice or pay, the earnings must be paid within three days. When no notice is required, earnings must be paid within ten days. When the employee is required to give notice, but fails to do so, earnings must be paid within ten days plus the length of the required notice period.

Q: **Which of the following statements best reflects your views?**

☐ The provisions about payment of earnings need change.

☐ The provisions about payment of earnings do not need change.

☐ No opinion.

B. DEDUCTIONS FROM EARNINGS

The *Code* allows an employer to make deductions from an employee's earnings for the following limited purposes:

- Deductions required by law (e.g. income tax, court orders),
- Deductions authorized by a collective agreement that applies to the employee, and
- Deductions for an amount that is personally authorized in writing by the employee.

Some deductions are limited by the *Code*. For example, deductions for board and lodging may not reduce an employee's wages below the minimum wage by more than a specified amount. In addition, deductions for uniforms cannot exceed the employer's cost of the uniform and cannot reduce the employee's wages below the minimum wage.

The *Code* prohibits deductions for faulty workmanship, cash shortages or loss of property when the employee did not have sole access to the cash or property.

Q: Which of the following statements about deductions from earnings best reflects your views?

☐ The provisions about deductions from earnings need change.

☐ The provisions about deductions from earnings do not need change.

☐ No opinion.

8. General holiday pay

There are nine general holidays in Alberta. These holidays include: New Year's Day, Canada Day, Thanksgiving Day and Remembrance Day. Employers and employees have said that Alberta's general holiday legislation is difficult to understand and apply. Two main issues have been raised: first, there are numerous eligibility requirements, and second, an employee is not entitled to general holiday pay or an additional day off when a general holiday falls on a regular day of rest or a day off.

Q1: Which, if any, of the following eligibility requirements should be eliminated? You may choose more than one.

- ☐ An employee must have worked 30 days for their employer in the preceding 12 months.
- ☐ An employee must work their last scheduled work day before, and first scheduled work day after, the holiday (unless consent is obtained from the employer to take either shift off).
- ☐ An employee must work on the general holiday if asked.

Q2: Should employees be entitled to general holiday pay if the holiday falls on a day off? For example, if an employee works Monday to Friday and the holiday falls on a Saturday, should he/she receive general holiday pay?

☐ Yes ☐ No ☐ No opinion

9. Termination of employment

A. BY THE EMPLOYER

Generally employers must provide notice, or pay instead of notice, when terminating the employment of an employee. The current requirements are outlined in the table below.

LENGTH OF SERVICE	AMOUNT OF TERMINATION NOTICE OR PAY INSTEAD OF NOTICE
3 months or less	None
More than 3 months but less than 2 years	1 week
2 years or more but less than 4 years	2 weeks
4 years or more but less than 6 years	4 weeks
6 years or more but less than 8 years	5 weeks
8 years or more but less than 10 years	6 weeks
10 years or more	8 weeks

Q: Are these requirements appropriate?

☐ Yes ☐ No ☐ No opinion

In the following situations, an employer is not required to provide termination notice.
Please indicate whether or not you support each of the exceptions listed in the table below.

EXCEPTION TO TERMINATION NOTICE BY EMPLOYER	DO YOU SUPPORT EXCEPTION? YES	NO
When employer "fires" employee with just cause.	☐	☐
Employment less than three months.	☐	☐
Project specific employment less than 12 months.	☐	☐
Layoff after refusing an offer of reasonable alternative work.	☐	☐
Refusal of work available through a seniority system.	☐	☐
Employee not provided with work because of a strike or lockout involving other employees of the business	☐	☐
Where employee can elect to work or not (casual employee).	☐	☐
Employment contract becomes impossible to perform for unforeseeable reasons.	☐	☐
Seasonal employment.	☐	☐

B. BY THE EMPLOYEE

Employees must provide one week's notice of termination if they have been employed between three months and two years. For employment of two years or more, the employee is required to give two week's notice.

Q: Are these requirements appropriate?

☐ Yes ☐ No ☐ No opinion

In the following situations an employee is not required to provide termination notice. Please indicate whether or not you support each of the exceptions listed in the table below.

EXCEPTION TO TERMINATION NOTICE BY EMPLOYEE	DO YOU SUPPORT EXCEPTION? YES	NO
Employment less than three months.	☐	☐
Established industry custom or practice that differs from notice requirements.	☐	☐
Where continued employment would endanger employee's personal health and safety.	☐	☐
Employment contract becomes impossible to perform for unforeseeable reasons.	☐	☐
Employee is temporarily laid off but wants to permanently end relationship.	☐	☐
When employee is laid off after refusing an offer of reasonable alternative work.	☐	☐
Employee not provided with work by employer because of a strike or lockout.	☐	☐
Where employee can elect to work or not (casual employee).	☐	☐
When employee quits because of a reduction in earnings.	☐	☐

C. TEMPORARY LAYOFF

Under the *Code*, an employer may temporarily lay off an employee for up to 60 days. On the 60th day, if employment does not resume, the employee is entitled to termination pay.

Q: Which of the following statements best reflects your views?

- ☐ The temporary layoff provisions need change.
- ☐ The temporary layoff provisions do not need change.
- ☐ No opinion.

10. Fines and ticketing

A. FINES

The current fine maximums for convictions are $50,000 for an individual and $100,000 for a corporation. There are no minimum fines.

Q1: Which of the following statements best reflects your views around current fine maximums?

- ☐ They are appropriate.
- ☐ They are too low.
- ☐ They are too high.
- ☐ No opinion.

The idea has been put forward that the law should be changed to establish minimum fines to be a more efficient deterrent.

Q2: Which of the following statements best reflects your views on this issue?

- ☐ I support the creation of minimum fines.
- ☐ I do not support the creation of minimum fines.
- ☐ No opinion.

It has also been suggested that penalties for violations should be progressive, meaning that second or subsequent convictions would result in more serious penalties.

Q3: Which of the following statements best reflects your views?

- ☐ I support a system of progressive penalties.
- ☐ I do not support progressive penalties. Each case should be looked at on its own merits.
- ☐ No opinion.

B. TICKETING

Some jurisdictions such as British Columbia and Ontario use a process similar to traffic tickets to supplement the prosecution process. Generally, tickets are issued for less serious violations. Tickets could be given to both employers and employees for violations.

Q1: Do you support the use of tickets as a way of promoting greater compliance?

☐ Yes ☐ No ☐ No opinion

Q2: Who should be ticketed for violations?

☐ Employers and employees.

☐ Employers only.

☐ Employees only.

☐ No opinion.

11. Conclusion

If there are any other employment standards issues that you would like to provide feedback on, please use the space provided.

Alberta Human Resources and Employment
Employment Standards Review
8th Floor, 10808 - 99 Avenue
Edmonton, Alberta T5K 0G5

Employment Standards Contact Centre
(780) 427-3731, or toll free by first dialing 310-0000

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